

00-1220 D.H. v. Dick Simon Trucking Issued: 2-19-02

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D. H. asks the Utah Labor Commission to review the Administrative Law Judge's dismissal of Ms. H.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **ISSUE PRESENTED**

Should Ms. H.'s claim be dismissed with prejudice for her failure to attend the hearing scheduled on the claim.

### **BACKGROUND AND DISCUSSION**

On January 24, 2001, Ms. H. filed an application with the Commission's Adjudication Division for a hearing to establish her right to workers' compensation benefits for injuries allegedly suffered on November 15, 2000, while employed by Dick Simon Trucking. On May 9, 2001, the Adjudication Division mailed notice to Ms. H. at her address of record that a hearing would be held on August 6, 2001.

Ms. H. did not appear at the hearing scheduled for August 6, 2001. That same day, the ALJ issued an order dismissing Ms. H.'s claim. As with the original notice of hearing, the order was mailed to Ms. H. at her address of record. However, Ms. H. now advises the Commission that she did not receive either document.

The Commission recognizes that in some cases it is appropriate to enter default against a party that fails to properly participate in adjudicative proceedings. However, the Commission is unable to determine from the available record whether Ms. H. is at fault for her failure to attend the hearing, or her nonattendance is due to circumstances which she could not reasonably control.

In light of the foregoing, the Commission remands this matter to the ALJ for additional proceedings to establish an evidentiary record of the facts surrounding Ms. H.'s failure to appear at the August 6, 2001, evidentiary hearing. Based on such facts, the ALJ will issue a new decision addressing Ms. H.'s request for reinstatement of her claim.

### **ORDER**

This matter is remanded to the ALJ for further proceedings consistent with this decision. It is so ordered.

Dated this 19<sup>th</sup> day of February, 2002.

R. Lee Ellertson, Commissioner